IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.1559 OF 2003
IN
LONG CAUSE SUIT NO.7260 OF 1996

Shaikh Rani Begum Mohd. Shamim & Anr. ...Appellants
Vs.
Municipal Corpn of Greater Mumbai & Anr.. ..Respondents

Mr. Ashok R. Pande for the Appellants
Mrs. Nisha Dabhade for BMC

CORAM: SMT. ROSHAN DALVI, J.
DATED: 12TH APRIL, 2007

P.C.

1. This Appeal has been lodged since 2003 impugning the judgment in the Civil Suit filed in the Bombay City Civil Court dated 1st September, 2003. The Ad-interim and interim orders in the suit have been continued pending admission of this Appeal for the last four years. The Appeal has been numbered in 2007.

2. The Appellants were issued notice under Section 351 of the BMC Act. The notice dated 1st October, 1996 is for construction of B.M. Walls for two mezzanine floors described in the notice. The Appellants having replied to the notice, the BMC has considered their reply and passed demolition order following due

legal procedure, which is challenged in the Suit.

3. The appellants have relied upon and produced documents with regard to the structure claimed to be in their possession, since 1959 under an agreement of tenancy. The Appellants therefore, claim that they have been in possession of the structure for which the notice was given since that date.

4. The Appellants inter alia relied upon an assessment bill in respect of that structure which was annexed to the plaint in the Civil Suit. The assessment bill is for October, 1996 in the name of the original landlord. It shows assessment of the tenancy bill of shed, which is a ground floor structure. The assessment is not in respect of any mezzanine floor or first floor. The rest of the documents relied upon by the Appellant show some structure in existence, but what the Appellant had to show was the construction of BM walls for the two mezzanine floors described in the notice which is the structure sought to be demolished.

5. In the Suit the Appellant led evidence to show that he resided in notified slum. He produced a gazetted notification inter alia for a slum in CTS No.344.

6. No order, notice nor any of the documents produced by the Appellant show the suit structure in that notified slum. The learned trial Judge has considered the notification vis-a-vis the

Appellants' case of his structure being in the said notified slum as per his oral evidence. It is the Appellant' scase that is not challenged in the cross examination. The learned Judge has considered the documentary evidence itself. The learned trial Judge has considered each of the Appellant's documents.

7. The Appellant also contends that the notice issued to him is invalid in law because, it has been issued by the DMC without any mention that the DMC has been delegated the powers of the Municipal Commissioner. The delegation of powers, need not be shown in every correspondence or notice issued by the authority to whom the power is delegated.

8. There is no substance in the Appeal. The Appeal is dismissed. The Civil Application No.4536 of 2003 is disposed of as infrutuous in view of this order.

(SMT.ROSHAN DALVI, J.)